

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE UNITED STATES OF AMERICA)
Plaintiff,)
vs.)
TAMARA JONES,)
Defendant.)
) 4:16 CR 471 RWS

DEFENDANT JONES' MOTION TO WITHDRAW PLEA

Comes now Defendant TAMARA JONES, by and through her attorney of record, JoAnn Trog, and for her Motion to Withdraw Plea states as follows:

Statement of Facts

1. On October 26, 2016, an Indictment was issued charging Defendant in a two Count Indictment as follows: Count I, Theft of Government Funds and Count II, Misappropriation of Funds by a Fiduciary (Document 2).

2. On December 6, 2016, Defendant's then-Counsel filed a Waiver of Filing Pretrial Motions (Doc. 15) and on December 12, 2016, Defendant appeared in Court with Counsel and waived the right to file Pretrial Motions (Doc. 16).

3. On April 20, 2017, Defendant's then-Counsel filed a Motion to Withdraw as Attorney (Doc. 28) and on April 21, 2017, United States Magistrate Mensah granted the Motion to Withdraw and appointed new Counsel for Defendant (Doc. 29).

4. On June 23, 2017, Defendant appeared in Court, with Counsel, and pursuant to a Plea Agreement, entered a Plea of Guilty to Count II of the Indictment and her sentencing was set for September 22, 2017 (Docs. 39, 40, 41).

5. After the Guilty Plea and, at the request of Defendant's then-Counsel request was made for a Status Conference (Doc. 43) and the Court granted Defendant's Motion and held a Status Conference on August 25, 2017 (Doc. 45).

6. That at said Status Conference, additional documents were filed relating to Defendant (Doc. 46).

7. On September 11, 2017, Defendant's then-Counsel filed a Motion to Withdraw (Doc. 48) and said Motion was granted and sentencing was continued to November 21, 2017 (Doc. 56).

8. Undersigned Counsel was appointed to further represent Defendant in this matter (Doc. 57)..

Motion to Withdraw Plea of Guilty

Rule 11(d)(2)(B) of the Federal Rules of Criminal Procedure contains a provision establishing a defendant's right to withdraw a guilty plea:

(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:

- (1) before the court accepts the plea, for any reason or for no reason; or
- (2) after the court accepts the plea, but before it imposes sentence if:
 - (A) the court rejects a plea agreement under Rule 11 (c)(5); or
 - (B) **the defendant can show a fair and just reason for requesting the withdrawal.** (Emphasis added).

In this case, Defendant pled guilty to Count II of the Indictment on June 23, 2017. Subsequent to said Plea, Defendant produced certain evidence relating to her case which

was not previously produced by the Government, which evidenced was filed with the Court on September 25, 2017, by the Government (Doc. 46).

Defendant acknowledges that a “plea of guilty is a solemn act not to be disregarded because of belated misgivings about [its] wisdom.” *United States v. Woolsey*, 440 F.2d 1280, 1281 (8th Cir. 1971). Pursuant to Fed.R.Crim.P. 11(d)(2)(B), this Court has the authority to allow a defendant to withdraw a plea of guilty if a defendant can show a “fair and just reason.” *United States v. Cruz*, 643 F.3d 639, 641 (8th Cir. 2011). In making its decision, the Court is required to consider additional factors, including whether the defendant asserts his innocence of the charge, the length of time between the guilty plea and the motion to withdraw, and whether the Government will be prejudiced. “A motion to withdraw a guilty plea if made prior to sentencing is addressed to the sound discretion of the Court and should be freely granted if for any reason the granting of the privilege seems fair and just.” *United States v. Rogers*, 289 F.Supp. 726, 729 (D. Conn. 1968)(citing *Kersheval v. United States*, 274 U.S. 220, 224 (1927)).

Defendant believes that the additional information presented to the Court on August 25, 2017, and filed with the Court on that same date (Doc. 46) significantly affects the matters to which she entered a plea of guilty to on June 23, 2017. Further, undersigned Counsel was just recently appointed and has reviewed the documentation with Defendant and believes that the instant Motion to Withdraw Plea is predicated on matters would result in a fair and just resolution of the outstanding charge absent her heretofore Guilty Plea on June 23, 2017.

Further, undersigned Counsel has discussed this matter and the filing of the instant Motion to Withdraw Guilty Plea with Thomas C. Albus, Assistant United States Attorney, and he has indicated he has no opposition to this Motion.

With the acquiescence of the Government to Defendant's Motion, Defendant believes that no prejudice will result to either the Government or the Defendant, that the ends of justice would be served, and that, therefore, her Motion should be granted and, further, that the Sentencing Hearing scheduled for November 21, 2017 (Doc. 56) should be cancelled; that the Court should issue a trial setting to allow for the Defendant and Government to reach either a disposition or the matter will be tried.

WHEREFORE, for the foregoing reasons, Defendant respectfully requests that this Court issue its Order allowing Defendant to Withdraw her Plea of Guilty pursuant to the Guilty Plea Agreement (Doc. 40) which document shall be held as null and void; that the Court remove the Sentencing Hearing now scheduled for November 21, 2017 (Doc. 56) from its docket; and for such other and further Orders as the Court deems appropriate in the premises.

Respectfully submitted,

/s/ **JoANN TROG**
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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Thomas C. Albus, Assistant United States Attorney, 111 South 10th Street, 20th Floor, St. Louis, Missouri 63102.

/s/ **JoANN TROG**